S.B. Civil Second Appeal No.432/2007
LRs of Jeeta Ram
vs
Ganpat Ram & Ors.

Date of order : 5.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.Suresh Shrimali]
Mr.Rajesh Choudhary], for the appellant.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the judgment and decree passed by the trial court dated 6.9.1993 and the appellate judgment and decree dated 1.11.2007. In the suit for possession filed by the plaintiff-respondent, the trial court decreed the suit in favour of plaintiff and appeal of the appellant was dismissed by the appellate court, hence, this second appeal.

Brief facts of the case are that plaintiff filed the suit on 22nd Sept., 1979 alleging that property in dispute was sold to the plaintiff by the Gram Panchayat vide resolution no.2 dated 31.10.1965. This transfer of property was made by auction of the plots. The plaintiff was given possession of the property after deposit of entire sale consideration on 4th March, 1970. The plaintiff also obtained the permission to raise construction and constructed six shops over the property. The defendant encroached

upon a small portion of land by putting a cabin of 8'x'8' on 8.3.1970 upon which the plaintiff filed the suit for possession of the property as defendant increased his possession. The plaintiff also specifically pleaded that there was some dispute raised by defendant Jeetaram and proceedings for removal of Jeetaram's possession was initiated in the Panchayat Samiti Sumerpur and in that proceeding, a decision was given against the defendant on 20.2.72. The rest of the pleadings are not very much relevant and the defendant's case in written statement is in respect of raising dispute about the sale in favour of plaintiff on the ground that the sale in favour of plaintiff was absolutely void-ab-initio and defendant also raised dispute about the measurement of the property and stated that he is in possession of the property as it was let out to the defendant and Sarpanch of the Gram Panchayat even gave receipt of rent in the year 1969 to the defendant.

In the trial court both the parties led their evidence and thereafter,the trial court as well as appellate court concurrently held that the sale proceedings were conducted in favour of the plaintiff for the property in dispute itself and defendant's contention that he was in possession of the property as tenant is not proved and mere by one receipt issued by Sarpanch without there being any order of

letting out the property to the defendant the tenancy cannot be created. The decree for possession is under challenge in this appeal.

Learned counsel for the appellant vehemently submitted that the plaintiff's all documents which have been referred by the appellate court in detail in para no.16 of the judgment clearly reveal that by these documents, no title can be created in favour of the plaintiff and, therefore, the person in possession cannot be evicted by a person who has no title vested in him. It is also submitted that even the documents, which were relied upon by the appellate court as well as trial court, are the receipts by which certain amount was deposited by the plaintiff with the Gram Panchayat and the notice issued by the plaintiff to the defendant and reply given by the defendant to the plaintiff. In view of the above reason, the weakness of the case of the defendant cannot entitle plaintiff to obtain a decree for possession. It is submitted that in view of Section 110 of the Evidence Act, person in possession is deemed to be owner of the property and the burden is upon the person who is seeking possession to establish his title. All these things have not been examined by the trial court as well as appellate court.

Learned counsel for the appellant also submitted

that appellant submitted an application under Order 11 Rule 14 CPC before the first appellate court which was rejected on the ground that Municipal Board was not party in the suit. That order of the trial court was challenged by the appellant by preferring writ petition before this Court, which was registered as SB Civil Writ Petition No.3042/2004 wherein an objection was raised whether application under Order 11 Rule 14 CPC can be submitted before the appellate court after trial, but in view of the order of this Court passed in revision the court below could not have refused the petitioner's prayer for production of document. The appellant was denied opportunity to produce the sufficient evidence and, therefore, the judgment and decree deserves to be set aside.

I considered the submissions of learned counsel for the appellant and perused the order of the trial court dated 25.10.2002 by which petitioner's application under Oder 11 Rule 14 CPC was dismissed by the court below and the review order dated 8th May, 2003 by which the review petition to challenge the order dated 25.10.2002 was dismissed by the first appellate court and the order of this Court passed in SB Civil Writ Petition No.3042/2004 and also perused the written statement submitted by the defendant in the trial court.

From the aforesaid facts, it is clear that plaintiff's case was that plaintiff purchased the property from the Gram Panchayat in public auction on 31.10.1965 and he deposited the entire cost of land. The appellant submitted copies of the receipts by which he deposited the amount. He specifically pleaded that possession was handed over to the plaintiff and plaintiff raised construction over the land in dispute, but defendant encroached upon one small piece of the same land. In reply to it, the defendant specifically in written statement admitted that plaintiff was highest bidder for the property in question. However, the defendant raised dispute about the measurement of the property which was sold to the plaintiff. The defendant very specifically pleaded that the property was belonging to the Gram Panchayat and also admitted that he is having only claim of his tenancy right for which he placed on record one rent receipt dated 4th Oct., 1969 of Rs.200/- issued by the Sarpanch of the Gram Panchayat. The two courts below after considering the evidence in detail reached to the conclusion that in view of the complete events where the plaintiff was found in possession of the property by virtue of the purchase of the land in public auction from the Gram Panchayat, Sumerpur and the defendant himself admitted that in auction, the plaintiff was the

higher bidder and in view of the fact that he claimed that plaintiff was in possession of the property and defendant encroached upon the land then in totality of the facts of the case, if the courts below reached to the conclusion that the plaintiff is entitled to possession and the defendant failed to prove his lease from the predecessor in title of the plaintiff then the defendant has no right to remain in possession. So far as order of the first appellate court dated 25th Oct., 2002 by which appellant's application filed under Order 11 Rule 14 CPC was dismissed, that issue has been finally decided by this Court in S.B.Civil Writ Petition No.3042/2004 dated 4th July, 2007 and this Court clearly found substance in the submission of learned counsel for the petitioner-plaintiff that application could not have been filed under Order 11 Rule 14 CPC at appellate stage as by that time, the trial was also over. This order is binding upon the appellant. This Court also observed that the defendant-appellant could have moved the application under Order 41 Rule 27 CPC before the first appellate court and admittedly no such application was filed by the appellant before the first appellate court.

So far as claim of the title on the basis of possession of the defendant with the help of Section 110 of the Evidence Act is concerned, that is not

available to the defendant as he himself admitted that he is not owner of the property, by admitting that he is tenant in the property in dispute of the predecessor in title, through whom the plaintiff is claiming his title. A person who is in permissible possession and admits himself to be a tenant of other party, cannot take advantage of Section 110 of Evidence Act and state that he is the owner of the property merely because of his possession. Admission of the defendant of title of the Gram Panchayat/Municipal Board in this case is sufficient to destroy his claim of title on the basis of Section 110 of the Evidence Act.

In view of the above, I do not find that any substantial questions of law are involved in this appeal and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-